



REGULAR MEETING
PUBLIC EMPLOYEES' RETIREMENT BOARD

JANUARY 26, 2006

The regular meeting was called to order by President Carey at 8:30 a.m. Thursday, January 26, 2006. Roll call was taken with all members of the Board being present. Board members and staff present were:

Carole Carey, President
Betty Lou Kasten, Vice President
Robert Griffith, Member
Jay Klawon, Member
Troy McGee, Member
John Paull, Member
Terry Smith, Member
Roxanne Minnehan, Interim Exec. Dir.
Kelly Jenkins, Counsel
Melanie Symons, Counsel
Linda Owen, Secretary

OPEN MEETING

Tim Jones and Sue Winchester, Great-West Retirement Services; Jim Kembel, MPPA, MACOP, TIAA-CREF; Craig Charlton, Smith Law Firm; Terry Teichrow, PERS Member; Tom Schneider, MPEA; Bob Bergren, Rick Ryan, Chad Nicholson, Matt Norby, Scott Moore, Douglas H. Neil, Jack Trethewey, and Ed Regele, members of the Montana State Firemen's Association; Kim Flatow, Member Services Bureau Chief; Carolyn Miller, Administrative Officer; and Barb Quinn, Accounting Supervisor, MPERA, joined the meeting.

MINUTES OF OPEN MEETING

The minutes of the open meeting of December 9, 2005 were presented. Mr. Klawon moved that the minutes of the previous open meeting be approved. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

The minutes of the Sub-committee on Personnel meetings of December 8 and December 28, 2005, and January 11, 2006 were presented. Mr. Klawon moved that the minutes of these meetings be approved. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the three Personnel Sub-committee members voting aye.

The minutes of the Legislative Committee meetings of December 14 (amended) and December 15, 2005 were presented. Mrs. Kasten moved that the minutes of these meetings be approved. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the three Legislative Committee members voting aye.

The Board thanked Linda Owen for the outstanding job she has done with an unusually heavy workload.

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No Public Comment.

EXECUTIVE DIRECTOR'S REPORT – Roxanne Minnehan, Interim Executive Director

Policy Committee Report – A change has been incorporated into the Board Committees Draft Policy to have the Board President select the Committee Chairs. The Governance Principles also require that change.

Mr. McGee moved that the Board's Governance Policy be amended to require that the Board President appoint Board committee chairs. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Mr. McGee moved that the Board's Policy on Board Committees, BOARD Proc 02 be adopted as amended. Mr. Klawon seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

EIAC Appointments – Kathy Samson advised the Board that seven appointments are needed, or need to be reappointed, on the Employee Investment Advisory Council (EIAC); five positions whose terms expired July 31, 2005 and two positions that are vacant.

Mr. McGee moved to appoint the following candidates to the Employee Investment Advisory Council, for a 3-year term beginning August 1, 2005 and expiring July 31, 2008:

- Tom Bilodeau as labor organization representative (re-appointment)
- Ron Alles as local government representative (re-appointment)
- Kathy Samson as MPERA representative (re-appointment)
- Mary Spaulding as state employee/ICCW representative (new appointment replacing retired John Northey)

Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

President Carey moved to inquire if Clifford Sheets would like to be the Board of Investments representative to the Employee Investment Advisory Council. Mr. Klawon seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Mr. McGee moved to appoint Paula Stoll as state employee representative to the Employee Investment Advisory Council to complete the term vacated by Kevin McRae. This term will expire on July 31, 2007. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Grievance – The MPER Board determined on November 21, 2005, to void Terry Teichrow's employment contract. Mr. Teichrow had been offered and had accepted the position of Executive Director in early November 2005. The decision to void Mr. Teichrow's employment contract had nothing to do with any action of Mr. Teichrow. The decision was made as a result of a lawsuit filed against the Board alleging violations of open meeting laws during the hiring process. The Board recognized that open meeting laws were violated. Because the offer of employment had already been made and accepted, it was necessary to void the employment contract.

Mr. Teichrow filed a Notice of Grievance on December 12, 2005. The Board's Step II response was due to Mr. Teichrow no later than December 27, 2005. Step II is done by the direct employer. On December 22, 2005, in a public hearing attended by Mr. Teichrow and his attorney, the Board denied Mr. Teichrow's grievance. The Board determined that the issue is one of contract, not a personnel matter. Mr. Teichrow was notified of the Board's decision by letter dated December 27, 2005. By letter dated December 30, 2005, Mr. Teichrow's attorney included an alleged violation of privacy rights in Mr. Teichrow's grievance and requested a hearing as provided by Step III of the grievance procedure. This Step III request must now be considered by the Board.

Ms. Symons noted the Board previously determined that the subject of this grievance is not suspension of pay, disciplinary demotion, or discharge, as provided in ARM 2.21.8018. Therefore, it is not subject to a Step III hearing. Rather, it is subject to review by a department head. Since the MPER Board is only administratively attached to the Department of Administration (DOA), the Step III process should remain with the Board rather than advancing to the Director of the DOA. The Board's decision should remain the same as that in response to Step II. Legal counsel recommended that the Board continue procedures in public and again, deny the grievance. A final administrative decision should be issued and Mr. Teichrow should be advised of his right to appeal the Board's determination.

Craig Charlton, one of Mr. Teichrow's attorneys, noted the objections already submitted in writing and that they continue to make those objections, and continue to object to the characterization of this as a non-termination issue.

Mr. Griffith moved that the Board deny Terry Teichrow's grievance at Step III. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with six of the attending members voting aye, and Mr. Klawon voting nay.

Attorney Performance Appraisal Format – President Carey advised the Board that before Mike O'Connor retired, he provided her with draft performance appraisal forms for the attorney positions, as well as a self-evaluation form. Mr. Jenkins noted there is a place for employee comments, where the employee is given the opportunity to provide written or verbal feedback on the appraisal process. He felt it would be very helpful, for both the Board and the employee, to have a dialogue exchange. Mr. Jenkins felt the self-evaluation will prove to be an interesting tool.

The Board and Ms. Minnehan might utilize the observation and measurement mechanisms set out in the performance appraisal form, such as talking to co-workers, plan members, beneficiaries, etc. Mr. Griffith felt the Board should set the parameters and someone who works in a supervisory role of the attorneys should do the evaluations. Mr. Klawon pointed out this would not be the first time the Board has done performance appraisals. President Carey stated she would like these performance appraisals completed on an annual basis.

Mr. Klawon moved to accept the Attorney Performance Appraisal and Self-evaluation forms as presented. Mrs. Kasten seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Legislative Proposal Review Schedule – Ms. Minnehan presented a Proposed Legislation Chronology which Mr. Jenkins had compiled with information from the State Administration and Veterans' Affairs (SAVA) and the Office of Budget and Program Planning (OBPP). The Board needs to anticipate what types of legislation they want to consider and what the deadlines are. The existence of a funding bill will be necessary.

The Board needs to look at both sides of the funding issue. There are constitutional parameters on what can be done. Within those constitutional parameters, there needs to be detailed discussion about possibilities and the Board's priorities.

The Board will communicate with SAVA and the OBPP about how to approach proposed legislation. Internal staff procedure at the Legislative Council is to have all interim committee work done by September 15 because staff needs to be free after that date so they can begin bill drafting for the upcoming legislative session. SAVA will consider moving that date to September 18, to allow for consideration of PER Board actuarial valuations.

The Board legislative committee, consisting of Mr. Griffith (Chair), Mrs. Kasten and Mr. Paull, will meet Tuesday, February 7, 2006 at 9:00 a.m. to discuss different legislative options and proposals. Tim Jones would like to be on the notification list that is sent out to groups that have an interest in proposing legislation. Tom Schneider advised the Board the MPEA convention is not until May 5-6 and they do not deal with legislative resolutions until that convention. Although the Board may have deadlines set prior to that, their proposals would not be available until after May 6. They have no choice because they cannot pre-determine what will develop from the convention.

Mr. Klawon moved to accept the Proposed Legislation Chronology timeline. Mrs. Kasten seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Out of State Travel Authorization – Mr. Paull made a motion to approve the out of state travel authorization for Roxanne Minnehan and Barbara Quinn to attend the Government Finance Officers Association Annual Conference in Montreal, Quebec, Canada, May 7-10, 2006. Mr. Smith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

March Board Meeting – President Carey had a scheduling conflict on March 23 and requested that the March Board meeting be moved to March 30. Mr. McGee moved that the March meeting be moved to March 30, 2006. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Presentation of Comprehensive Annual Financial Report (CAFR) – Barb Quinn gave an overview of the PERB's Comprehensive Annual Financial Report for fiscal year ending June 30, 2005. She noted that the 2004 Annual Report was awarded the Government Finance Officers Association (GFOA) Award – Certificate of Achievement in Financial Reporting—for the seventh consecutive year. This demonstrates consistency in reporting and adherence to Generally Accepted Accounting Principles (GAAP). The 2005 Annual Report has been submitted to the GFOA.

Ms. Quinn addressed highlights from each of the five sections of the Annual Report: Introduction, Financial, Investment, Actuarial, and Statistical. Some of the new items in the report are:

- Notes to the Financial Statements have been enhanced by including additional risk disclosures according to GASB Statement 40.
- The Schedule of Funding Progress has been revised.
- More information has been added to the Notes to the RSI.
- Information has been included regarding the administrative expenses for investments held by the BOI.
- There are many changes to the Statistical Section due to GASB Statement 44.

An Actuarial Valuation was performed in 2005 due to the funding situation of PERS, GWPORS and SRS. The actuarial valuations can be viewed on MPERA's website. Valuations are generally done every other year and they will be back on schedule with one being done in 2006. The 2005 Annual Report received a favorable opinion from the auditors.

Quarterly Budget Review – Roxanne Minnehan gave a brief overview of the quarterly budget report as of December 31, 2005, marking the halfway point for fiscal year 2006. She noted the overall budget for all programs stands at 36% expended. Ms. Minnehan answered any questions Board members had.

Executive Director Recruitment and Selection Update – Mrs. Kasten reported that Phase I of the recruitment and selection process has been completed and the Sub-committee will be moving into Phase II. Ms. Symons noted the job announcement was posted January 20, 2006 and closes March 2, 2006. Applications can be returned to either the Helena Job Service or the Department of Administration with the MPERA Post Office Box. Any applications received in the MPERA office will be forwarded to CMS by Ms. Symons.

The next Personnel Sub-committee will be February 6, 2006, at 1:30 p.m. Mrs. Kasten wanted everyone, particularly the public, to know it was decided at the January 19, 2006 Board meeting what would be closed to the public and what would be open. Any questions regarding the Board's decisions on this issue can be directed to the MPERA office.

DOA Human Resources Unit Fees and Services – At the December 28, 2005 Board meeting, Mr. Klawon had requested information on the fees charged and the services provided from the Department of Administration's Human Resources (HR) Unit. The HR Unit is a proprietary unit. Pat McNamee, Management Support Bureau Chief, provided the billing schedule for HR Unit services, as well as a list of services provided by the HR Unit, which is a proprietary unit. Services are allocated based on the number of full-time equivalent (FTE) at each agency. The rate for FY 2006 is \$476/FTE. MPERA's cost for FY 2006 is \$16,898, based on 35.5 FTE. The rates cover the salaries and overhead costs of the unit. There were no extra costs incurred by the Board to obtain the services of Barb Kain as an observer of the hiring process. Mr. Klawon noted that the list of services received from the HR Unit states they will "coordinate" the recruitment and selection process, not just be an "observer." Mrs. Kasten noted that in the same list of services, it also stated they will "ensure compliance with...all federal and state employment laws" and "provide guidance to ensure...state and federal personnel policies and procedures are adhered to..."

At the request of Senator Shockley, a letter was sent to Barb Kain on December 21, 2005, requesting information regarding the hiring process that culminated with Terry Teichrow being offered the position of Executive Director. The legislator had provided specific questions to be asked. One of his biggest concerns was what possible legislation was out there that would put the Board's control back with the DOA. Director Janet Kelly had said, "None." Apparently, Ms. Kelly had spoken with Senator Shockley and she believed his concerns had been alleviated. However, all of those issues had not been satisfied by that conversation with Janet Kelly, and Mr. Klawon would like the Board to receive a response on this. Ms. Symons did not know if Ms. Kelly's communication with Senator Shockley was a result of the letter, or if it was something totally separate. Mr. Klawon felt Ms. Kelly's conversation had more to do with pending legislation.

Mr. Jenkins did not understand why Ms. Kain would think she could just be an observer in the process instead of actually giving the Board proper advice. He felt the Board needs to find out what will happen in the future if the Board ever intends to rely on the DOA with regard to any personnel decisions. What can the Board rely on and will the DOA provide services? It may be best if the Board does not assume anything from the DOA, but makes them provide a detailed inventory of what they would provide and what the Board can rely on.

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Mr. Smith felt this was the Board's problem, not necessarily the DOA's problem, and that the Board should have been aware of the changes in the law and the ramifications to this body as a result of that change in the law. Mr. Jenkins noted there were changes in the law that gave the Board greater authority in the hiring of the executive director. The DOA was well aware of those changes, so did the Board have some accountability because they did not remind DOA HR of what their job was in light of legislative changes that they were well aware of? While Janet Kelly probably cannot be held responsible for knowing about that legislative change, Barb Kain certainly can. She was right in the middle of that because she had the same job function with relation to this Board at that time that she does now. As far as Mr. Jenkins was concerned, the Board was relying on the professional who should have been taking that into account and should have been well aware of the differences between the legal situation now and the legal situation the last time an executive director was hired.

Mrs. Kasten would like this situation clarified. This is a volunteer board and there are so many things in statute they may not be aware of and cannot be held accountable if they are seeking advice from those who should know. The Board has done exactly what the Governor's lawsuit asked them to do, yet the lawsuit still has not been dismissed.

President Carey requested that Ms. Minnehan make a "second" request to obtain a response to the questions posed to Barb Kain regarding the initial executive director hiring process because this issue has not been answered to the Board's satisfaction.

2006 Annual Business Plan – Ms. Minnehan presented a draft 2006 Business Plan and list of other topics for Board consideration. With a strategic business plan, the Board could plan their goals and objectives for calendar year 2006 on a month-by-month basis.

Board of Investments (BOI) Update – Mr. Paull reported that Independent Fiduciary Services had recommended the BOI obtain an investment consultant. R.V. Kuhns was hired as the consultant and contracts were signed last month. Their first presentation before the BOI will be an educational seminar, held February 16, 2006. The public will be invited to attend.

On February 7, 2006, Nomura Asset Management, USA, one of BOI's International Equity Managers will give their annual presentation to the BOI. Everyone is invited.

Litigation Update – Mr. Jenkins noted the Baumgardner case is still pending. They have submitted a renewed motion. Mr. Jenkins has not heard from the court whether there is a hearing date, or whether they are going to have a hearing or an oral argument on the issues.

Future Board Meetings – Thursday: February 23, March 30, and April 27, 2006. Mr. Paull moved that the March meeting be changed to March 30, 2006. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

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Operational Summary Report - The Executive Director presented an operational summary report for the months of November and December 2005, answering any questions Board members had.

The following portion of the meeting relates to matters of individual privacy. President Carey determined that the demands of individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed.

CLOSED MEETING

MINUTES OF CLOSED MEETING

The Executive Director presented the minutes of the closed meeting of December 9, 2005. Mr. Klawon moved that the minutes of the previous closed meeting be approved as amended. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

RETIREMENT REPORT – Kim Flatow, Member Services Bureau Chief

Disability Claims – Ms. Flatow presented the disability claims for Board consideration. Mr. Paull made a motion for approval of the disability claims as recommended for Charles Cunningham, without annual review; for Jeanne Archdale, Karen Decker and David Lancaster, with annual review; and denying the claim for Carolyn Hotzel. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Finalized Service/Disability Retirement Benefits, Monthly Survivorship/Death Benefits, VFCA Lump Sum Death Benefit Payments, and Funeral Benefits - Applications for service retirements/finalized disability benefits, applications for monthly survivorship-death benefits, VFCA lump sum death benefit payments, and applications for funeral benefits were presented to the Board. Mr. Griffith made a motion to approve the retirement benefits as presented. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Thomas Frank - Request for Service Credit – Custer County and Mr. Frank are requesting to receive full service credit for the period of November 2003 through July 2005. Mr. Klawon moved to grant Tom Frank service credit for the months of November 2003 through July 2005. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Contested Case Report Update - The Board Attorneys presented a contested matter status report update.

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CONTESTED CASES

Julianna Stevens - Informal Reconsideration – Mrs. Stevens appeared before the Board requesting reconsideration of the Board's previous denial of her disability claim. Following a lengthy discussion, Mrs. Kasten moved that the Board uphold previous denial of disability benefits for Juliana Stevens. Mr. Klawon seconded the motion, which upon being submitted to vote, was duly carried with six of the attending members voting aye, and Mr. Klawon voting nay.

Michael Bentley - Informal Reconsideration – Mr. Bentley was appealing the Board's decision to uphold their previous denial of a disability retirement. After discussion, Mr. McGee moved that the Board approve a disability retirement with annual reviews for Michael Bentley. Mr. Klawon seconded the motion, which upon being submitted to vote, was duly carried with Mr. McGee, Mr. Paull, Mr. Klawon, and President Carey voting aye, and Mrs. Kasten, Mr. Griffith and Mr. Smith voting nay.

ADJOURNMENT

There being no further business to come before the Board at this date, Mrs. Kasten made a motion to adjourn the meeting. Mr. Klawon seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye. The next meeting is tentatively scheduled for February 23, 2006, at 8:30 a.m. in Helena.